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**March 20, 2009**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case:	Personnel Security Hearing
Date of Filing:	October 31, 2008
Case Number:	TSO-0686

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be granted.

**I. Background**

The individual is employed by a Department of Energy (DOE) contractor. The contractor has requested that DOE grant the individual an access authorization ("security clearance" or "clearance"). The individual was previously granted a clearance in 1992 while working for another DOE contractor. In October 1995, the individual tested positive for illegal drugs and spent one week at a rehabilitation program. He failed a second drug test in May 1996 and the employer fired him. In 2001, the individual was hired by his current employer. The employer requested that DOE grant the individual a security clearance and in February 2008, the individual disclosed his prior drug use on a Questionnaire for National Security Positions (QNSP). The local security office (LSO) conducted a personnel security interview (PSI) with the individual in June 2008, but that interview did not resolve the security concerns.

In September 2008, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (September 11, 2008). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (k) and (l) (Criteria K and L).

DOE invokes Criterion K when a person has allegedly trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances except as prescribed or administered by a physician or as otherwise authorized by Federal law. 10 C.F.R. § 710.8 (k). DOE invoked Criterion K because of the individual's admissions during the June 2008 PSI that he failed random drug tests in October 1995 and May 1996 while he held a security clearance, that he used crystal

methamphetamines (“crystal meth”) in 1995 and 1996, that his drug usage in 1996 resulted in missing several days of work, that family and friends suggested he get counseling or treatment for his drug usage and that his use of illegal drugs contributed to losing his job, losing his girlfriend and filing bankruptcy.

Criterion L is concerned with information in the possession of DOE that indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy or which furnish reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l). With respect to Criterion L, the Notification Letter refers to derogatory information that raises concerns about the individual’s honesty, reliability and trustworthiness. Specifically, the individual admitted using drugs in 1995 and 1996 while he held a security clearance. Ex. 1.

In a letter to DOE Personnel Security on October 1, 2008, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the individual, who was represented by counsel, testified on his own behalf and called five other witnesses. DOE counsel called the individual, as a witness. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the parties during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.” DOE exhibits are numbered, and the individual’s exhibits are lettered.

## **II. Analysis**

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation

and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, I find that the individual's access authorization should be granted at this time because I conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

## **A. Findings of Fact**

In 1992, DOE granted the individual a security clearance at the request of his then employer, a DOE contractor. Ex. 6 at 3. In 1995, several employees in the individual's work group left their jobs and were not replaced. The individual was then responsible for the entire workload and began working long shifts in order to complete his work assignments. PSI at 89-90. During that year, an old friend introduced him to crystal meth and he began using the drug regularly in order to be more alert at work. *Id.* at 88. He failed a drug test in October 1995, and his employer sent him to an inpatient drug facility. *Id.* at 90. He attended the program for one week, but refused to attend group therapy. *Id.* at 92. The individual then returned to work and continued to use drugs, using crystal meth daily beginning in March 1996. In May 1996, the individual failed another drug test and the contractor fired him. *Id.* at 93. His clearance was terminated in June 1996. Ex. 6 at 3. According to the individual, he stopped taking drugs in June 1996 with the help of his mother. PSI at 41, 76, 98-101; Ex. 6 at 4.

He eventually found other work, but at a significant reduction in pay. *Id.* at 35. In 2000, the individual filed for bankruptcy. PSI at 42, 44. In 2001, the individual began working for his current employer. Ex. 4 at 3. The employer requested a security clearance for the individual. During a routine investigation, DOE uncovered derogatory information about the individual's previous drug use. PSI at 9-10. A PSI did not resolve the security issues, and the LSO sent the individual a Notification Letter advising him of his right to a hearing. Ex. 1.

## **B. DOE's Security Concerns**

Criterion K deals with the use of illegal drugs. Illegal drug use may cause an individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. See Revised Adjudicative Guidelines at 11. Also, illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. See, e.g., *Personnel Security Hearing*, Case No. VSO-0448 (2001); *Personnel Security Hearing*, Case No. VSO-0350 (2000). The individual's drug use is well documented in the record, and validates the charges under Criterion K.

As for Criterion L, the LSO alleges that during his PSI the individual admitted using illegal drugs while in the possession of a security clearance. Such behavior demonstrates an unwillingness to comply with rules and regulations which indicates that the individual may not properly safeguard protected information. His dishonest conduct also raises questions

about his reliability and trustworthiness. See Revised Adjudicative Guidelines, ¶ 15. Thus, the security concern under Criterion L is also valid.

## **C. Hearing Testimony**

### **1. The Individual**

At the hearing, the individual explained that a friend had offered him crystal meth in 1995. Tr. at 95. At that time, he was under pressure at work because a few employees had left his group, leaving him to handle the remaining workload. *Id.* at 104-105. He began using the drug so that he could stay awake while working his long shifts. In October 1995, he failed a drug test and his employer sent him to an inpatient drug program for one week. The individual was not cooperative and did not think that the program was helpful. According to the individual, he was not ready to stop using drugs because the consequences of his drug use were not yet severe enough to change his behavior. *Id.* at 104. He returned to work and began using drugs again. In the spring of 1996, the individual took another random drug test and failed. The employer fired the individual and his clearance was terminated in June 1996. After he was fired, some friends gave him a menial job and he then held a series of low-paying jobs until his current employer hired him back to the DOE site. *Id.* at 97-98. According to the individual, it took four years for his “head to clear” and to reform from his previous drug use. *Id.* at 103. He looked at others who were doing drugs and realized that he did not want to be like them. When he decided to change his life—in June 1996 when he lost his job—he stopped using drugs and eventually returned to living a responsible lifestyle. *Id.* at 94-96. Now he has learned to pace himself at work and to avoid getting overwhelmed by his workload. Further, he no longer associates with people who use drugs. The individual testified that he last used drugs in 1996. *Id.* at 103.

### **2. Character Witnesses**

The individual offered the testimony of five character witnesses—a union official, a friend, a colleague, and two childhood friends who are also colleagues. All of the witnesses described the individual as an honest and truthful person.

The first character witness has known the individual since he was a small child and they currently work together. *Id.* at 13-16. He knew that the individual held a clearance in 1995, and he also knew that the individual had a problem with substance abuse at that time. According to the witness, the individual made bad choices, lost his job, and was then ostracized in their small community. *Id.* at 16. However, he argued that the individual has changed and now members of the community show respect for the individual. *Id.* at 31. The individual also holds a leadership position in the union. *Id.* at 25. Further, the witness observed that the individual demonstrated responsibility by becoming a dedicated caretaker of his elderly mother when she was very sick during the last few years of her life. The witness testified that he sees no signs of dysfunction in the individual’s current lifestyle. He believes that the individual would not revert to drug use because the individual realizes that his drug use was a mistake and now feels good about himself. The witness knows that the contractor randomly tests the individual for drugs and the individual has not failed any of the

tests. *Id.* at 23. The individual no longer associates with anyone who uses drugs, including his friends from the early to mid-1990s and residents of their town who use drugs. *Id.* at 29.

Another childhood friend testified that she has had daily contact with the individual at work for the last five years. *Id.* at 57. She administers the drug tests for the contractor, and the individual has passed every test. *Id.* at 58. He takes at least one test per year. *Id.* at 59. She has never seen the individual use drugs, and considers him reliable and professional. She believes that he stopped using drugs because he matured and decided to take a different road in life. *Id.* at 68. He was promoted to a leadership position in his union, and she has observed that he handles stress well. *Id.* at 67. The individual now takes responsibility for his own actions. *Id.*

The third witness testified that he has known the individual since eighth grade. He testified that the individual lost many friends when he was using drugs, but that he regained the confidence of those friends when he stopped using drugs. *Id.* at 72. He believes that the individual came to the realization that he was headed in the wrong direction and that he is now dedicated to a clean, healthy, productive life. *Id.* at 73. The witness socializes with the individual and talks to him very often, and he does not think that the individual could be blackmailed. The individual spends time with the witness and his family. The individual no longer associates with people he knew when he was using drugs, or with people from their youth who were not good influences. The individual is very trustworthy and handles stressful situations well. *Id.* at 83.

A fourth witness stated that he has known the individual since 2001, and supervised him for a period of time. *Id.* at 87. He described the individual as a model employee with no indication of impairment. *Id.* at 88. The individual is well-liked at their work site and has many friends. He considers the individual to be dependable, honest and loyal. *Id.* at 86-93.

A union official testified that he has known the individual for seven years. The individual told him what had happened in the past, but the witness has never seen the individual use drugs. The individual handles his workload well, is treated with respect by others, and has a good reputation. *Id.* at 118.

### **3. Expert Witness**

A clinical psychologist who evaluated the individual in November 2008 at the individual's request also testified on his behalf at the hearing. *Tr.* at 43. The psychologist interviewed the individual for one hour and administered three tests: (1) the Substance Abuse Subtle Screening Inventory-3 (SASSI), which is widely used in substance abuse cases; (2) the Milan Clinical Multiaxial Inventory (MCMI); and (3) the Environmental Deprivation Scale (EDS). *Id.* at 38. The psychologist also submitted a written summary of his evaluation. See Ex. B.

According to the psychologist, the SASSI results showed a low probability that the individual suffered from a substance dependence disorder. *Id.* at 39. The individual also had a low score on the defensiveness scale of that test, which the psychologist interpreted as a reflection of the honesty of his answers. *Id.* The psychologist concluded that the

individual displayed an unusual level of honesty because, in the psychologist's experience, most people who request an evaluation for a security clearance hearing are defensive and try to avoid disclosure of anything that may be unfavorable to them. *Id.* at 45. The MCMI is a personality inventory test that is designed to reveal personality pathology and disorders. After evaluating the MCMI, the psychologist found no symptoms of any "clinical syndromes." *Id.* at 40. The EDS is designed to predict future incidences of maladaptive or illegal behavior. *Id.* at 41. After evaluating that test, the psychologist concluded that the individual had a low probability of future maladaptive behavior. *Id.* at 42. The psychologist also conducted a behavioral interview and a more structured mental status examination. These evaluations determined that the individual is oriented appropriately. The psychologist concluded that there is a low prognosis of future drug use because the individual had matured into a responsible 45-year old capable of making a decision to stop using drugs when he realized how much harm his drug use had caused him. *Id.* at 47. He found the individual to be very honest and testified that he did not try to hide his drug use. *Id.* at 52.

#### **D. Mitigation of Security Concerns**

##### **1. Criterion K – Drug Use**

According to the regulations, I must rely on the record and my observations at the hearing, and make a common-sense judgment on this matter as directed by 10 C.F.R. § 710.7(c). I have weighed several variables, including the circumstances surrounding the conduct, the potential for coercion, and the motivation for the conduct. It is troubling that the individual's drug use occurred when he was a mature adult. However, for the reasons set forth below, I find that he has presented sufficient evidence to mitigate the security concerns regarding his illegal drug use.

First, the individual's drug use has been mitigated by the passage of time. The individual credibly testified that he has abstained from the use of illegal substances since his last use in 1996, 13 years prior to the hearing. See Guideline H, ¶ 26(a) (stating that security concern may be mitigated by behavior that happened so long ago that it is unlikely to recur). Second, the concern is also mitigated by the length of time--13 years--that the individual has abstained from the use of illegal drugs. The character witnesses testified that they have not seen him use drugs, nor have they seen him appear to be impaired by drug use since 1996. See *Personnel Security Hearing*, Case No. TSO-0625 (2008) (finding that 15 months of abstinence lends credence to testimony of individual that she does not intend to use drugs in future); Guideline H, ¶ 26(b)(3) (stating that security concern may be mitigated by an appropriate period of abstinence). Third, the expert witness concluded that there is a low probability that the individual suffers from substance abuse or dependence and that his drug use was not habitual. The individual also submitted evidence of his last three drug tests and all were negative for the presence of any illegal drug. See Ex. D. Fourth, there is consistent testimony that the individual is now reliable, trustworthy, and exercises sound judgment. He holds a responsible union position, is respected in the community, and devoted many years to caring for his mother while she was sick. Finally, the individual has demonstrated his intent not to abuse drugs in the future. Guideline H, ¶ 26(b) (stating that security concern may be mitigated by demonstration of intent not to

abuse drugs in future). He has disassociated himself from drug-using associates, and provided corroborating testimony regarding his new lifestyle. *Id.* at ¶ 26(b)(1). After he stopped using drugs, he moved in with his mother. *Id.* at ¶ 26(b)(2). Based on the foregoing, I find that the individual's illegal drug use is unlikely to recur. *Id.* at ¶ 26 (a).

In summary, the individual has convinced me through his demeanor and testimony and that of his witnesses that there is little likelihood that he will use illegal drugs again. His illegal drug use occurred over a decade ago, he has abstained from the use of any illegal substance for 13 years, he has submitted expert testimony that he does not suffer from substance abuse or dependence, and he has demonstrated his intent not to abuse drugs in the future by severing his ties to any associates who used drugs and moving to his mother's home. All witnesses testified credibly that the individual has reformed his behavior and is now reliable and trustworthy. Thus, I conclude that the individual has mitigated the Criterion K security concerns in the Notification Letter.

## **2. Criterion L- Unusual Conduct**

The individual's use of illegal drugs while holding a security clearance is a serious matter, and raises questions about his judgment, reliability, trustworthiness and honesty. As a 35-year old, the individual was old enough to realize that he was breaking the law and that he was breaking his commitment to DOE to avoid illegal drugs. Despite that knowledge, he continued to use drugs after his first positive drug test, was uncooperative during his drug treatment, and did not stop using drugs until he was fired. These are serious errors in judgment that cannot be minimized.

To mitigate the Criterion L concerns based on his drug use while holding a security clearance, the individual presented the testimony of witnesses who described him as honest, reliable and trustworthy, along with information about his lifestyle in the 13 years since he stopped using drugs. I conclude after reviewing the record that the individual has mitigated the security concerns of Criterion L. First, I find that he has mitigated the security concerns relating to the possibility of blackmail. The individual has presented evidence that supports a conclusion that he is not subject to pressure, coercion or blackmail regarding his use of illegal drugs. Guideline E, ¶ 17(e). All witnesses were aware that the individual was in the administrative review process because of his previous drug use. They were long-term friends and colleagues, and testified credibly that the individual's previous drug usage was well known in the small community where they lived. The psychologist described the individual as showing very little defensiveness and exhibiting a high level of honesty. See *Personnel Security Hearing*, Case No. TSO-0210 (2005) (finding that credibility of witnesses is a mitigating factor in security concern regarding the honesty of an individual who used drugs while holding a clearance).

Second, the individual has presented evidence that he no longer associates with persons involved in illegal drug use and no longer uses illegal drugs. Guideline E, ¶ 17(g). See also *Personnel Security Hearing*, Case No. TSO-0360 (2006) (finding partial mitigation of security concern related to the use of drugs while holding a clearance based on passage of ten years since incident); *Personnel Security Hearing*, Case No. TSO-0327 (2006) (stating that the Criterion L concern of using drugs while holding a security clearance cannot be

resolved without resolution of the illegal drug use itself). There is credible testimony describing how the individual confronted his drug problem, and then stopped using drugs. During the hearing, he and his witnesses described the steps the individual took to change his life and to reform his behavior.

Third, I find, based on the credible testimony of the individual and his witnesses, that the individual has acknowledged his past drug problem, has stopped using drugs, has reformed his behavior, and has taken positive steps to alleviate the stressors, circumstances or factors that caused the untrustworthy behavior. I also find that the problematic behavior is unlikely to recur. Guideline E, ¶17 (d). His behavior demonstrates that he now comports himself in an honest, trustworthy and responsible manner. Moreover, the individual convinced me that he has maintained a drug-free and responsible lifestyle in the 13 years prior to the hearing. In addition, the individual has been honest throughout the proceeding in discussing his past activities and has not misrepresented or omitted any relevant information. His maturity and life experience demonstrate that he will no longer employ the poor judgment he exercised before he stopped using drugs 13 years ago. *See Personnel Security Hearing*, Case No. TSO-0681 (2009) (using “whole-person concept” to weigh important factors in a period of individual’s life sufficient to make an affirmative determination that the person is an acceptable security risk); *Revised Adjudicative Guidelines* at ¶ 2. Therefore, I conclude that the individual has mitigated the Criterion L concerns.

### **III. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (k), and (l). However, after a review of the record, I find that the individual has presented adequate mitigating factors for Criteria K and L. Thus, in view of the criteria and the record before me, I find that granting the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should be granted. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: March 20, 2009



